

subsequently stated that it only was seeking a very limited waiver of the rules to allow up to twenty-five percent of its new activations to be made with handsets that are not ALI-capable.<sup>155</sup> MMC requested relief from the requirement that one-hundred percent of all new handsets activations be location-capable by November 30, 2004, until it receives designation as an eligible telecommunications carrier (ETC) for purposes of receipt of universal service funding.<sup>156</sup> MMC stated that on August 5, 2004, the Missouri Public Service Commission denied its request for ETC designation, which it contends was essential to its plans for upgrading the rural-most portions of its service area to CDMA.<sup>157</sup> MMC sought rehearing by the MPSC.<sup>158</sup>

60. *Benchmark Relief.* As the Commission has recognized, Tier III carriers transitioning from one air interface to another may face difficulty in meeting their Phase II requirements. However, Tier III carriers requesting a waiver of the Phase II deployment requirements must demonstrate a path to achieving full compliance.<sup>159</sup> Furthermore, carriers claiming financial hardship must provide specific factual information in support of their claims, including efforts to obtain financing from available sources. MMC has upgraded eighteen of its twenty-seven cell sites with the CDMA air interface<sup>160</sup> and is currently selling only location-capable handsets in those areas that it has upgraded to CDMA.<sup>161</sup> MMC has sought universal service funding in order to finance the remaining build-out of its CDMA network.

61. We decline to grant MMC indefinite relief from the November 30, 2004 requirement for selling only location-capable handsets. While we appreciate MMC's efforts to obtain financing by applying for ETC status with the state of Missouri, the outcome of this proceeding is uncertain, and MMC has not otherwise provided specific financial information to support its financial hardship. Furthermore, MMC has not explained why it has not sought funding from any other available federal, state, or local sources. However, in light of the fact that MMC reported that it is not in receipt of any pending Phase II requests, we grant MMC an additional six months from the date of release of this *Order* to ensure that one-hundred percent of all new digital handsets activated are location-capable. Furthermore, MMC will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

62. **North Carolina RSA 3 dba Carolina West Wireless (Carolina West):** Carolina West previously operated an AMPS and TDMA network that it has since upgraded to CDMA.<sup>162</sup> It

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<sup>155</sup> See Petition of Missouri RSA No. 7 Limited Partnership dba Mid-Missouri Cellular for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov 5, 2004, at 8 n.12 (MMC 2004 Waiver Petition). We assume based on this subsequent filing that MMC no longer was seeking relief from the initial (September 1, 2003) and twenty-five percent (November 30, 2003) benchmark requirements.

<sup>156</sup> See *id.* at 7-9.

<sup>157</sup> *Id.* at 6, 8.

<sup>158</sup> *Id.* at 6. By contacting counsel for MMC by telephone, staff was informed that the MPSC issued an order on November 30<sup>th</sup>, 2004, effectively denying MMC's application for ETC status. Counsel for MMC further indicated that it continues to pursue MMC's application for ETC designation with the MPSC.

<sup>159</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>160</sup> See MMC 2004 Waiver Petition at 6.

<sup>161</sup> *Id.* at 7.

<sup>162</sup> See North Carolina RSA 3 Cellular Telephone Company dba Carolina West Wireless Petition for Extension of the Handset Activation Schedule Beginning November 30, 2003 for Phase II of Enhanced 911 Services, CC (continued....)

commenced Phase II service and started activating only location-capable handsets on June 18, 2004.<sup>163</sup> Carolina West sought to have the date for initiating sale of location-capable handsets extended from September 30, 2003 until June 18, 2004; the date for ensuring that twenty-five percent of all new handset activations are location-capable extended from November 30, 2003 until June 18, 2004; and the date for ensuring that fifty percent of all new handset activations are location-capable extended from May 31, 2004 until June 18, 2004.<sup>164</sup> Carolina West stated that the PSAPs in its service area have consented to this schedule.<sup>165</sup>

63. *Benchmark Relief.* We find that the relief requested by Carolina West would not undermine our overall policy objective of ensuring access to enhanced 911 services. As an initial matter, we note that Carolina West has transformed its waiver request from one that initially sought an additional nine months of relief to one that requests minimal benchmark relief.<sup>166</sup> We find such progress constitutes sufficient evidence that Carolina West is striving to achieve full compliance with the Commission's E911 requirements. Additionally, we note Carolina West's diligence in working with and informing the PSAPs in its service area, which serves as further evidence of its good faith efforts to achieve compliance.<sup>167</sup>

64. We therefore grant Carolina West's request that the date for initiating sale and activation of location-capable handsets be extended from September 30, 2003 until June 18, 2004; that the date for ensuring that twenty-five percent of all new handset activations are location-capable be extended from November 30, 2003 until June 18, 2004; and that the date for ensuring that fifty percent of all new handset activations are location-capable be extended from May 31, 2004 until June 18, 2004. Carolina West will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.<sup>168</sup>

65. **Northwest Missouri Cellular Limited Partnership (Northwest Missouri):** Northwest Missouri operated an AMPS and TDMA network that it planned to upgrade to CDMA. It requested extensions of both the September 1, 2003 deadline for initiating the sale and activation of location-capable handsets and the November 30, 2003 deadline for ensuring that at least twenty-five percent of all

(Continued from previous page)

Docket No. 94-102, filed Nov. 20, 2003 at 3 (Carolina West 2003 Waiver Petition); *see also* Supplement to North Carolina RSA 3 Cellular Telephone Company dba Carolina West Wireless Petition for Extension of the Handset Activation Schedule Beginning November 30, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed June 28, 2004 at 1-2 (Carolina West June 2004 Supplement).

<sup>163</sup> *See* Carolina West June 2004 Supplement at 2.

<sup>164</sup> *See id.* at 2. Carolina West did not seek extension of the deadline for achieving the one-hundred percent benchmark, which it expected to achieve before the November 30, 2004 deadline. *See id.*

<sup>165</sup> *See id.* at 6.

<sup>166</sup> *See id.*

<sup>167</sup> *See supra* ¶ 10.

<sup>168</sup> We note that Carolina West expressed reservations about its ability to meet this benchmark. *See* Carolina West June 2004 Supplement at 2. In the event that Carolina West anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Carolina West should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. *See supra* ¶ 11.

new handset activations were location-capable.<sup>169</sup> Northwest Missouri sought the requested relief to better coordinate its rollout of CDMA with its offering of location-capable handsets.<sup>170</sup> We have confirmed that the migration was completed in the summer of 2004 and that, since November 30, 2004, Northwest Missouri has been activating only location-capable handsets, consistent with the requirement adopted in the *Non-Nationwide Carriers Order*.<sup>171</sup>

66. *Benchmark Relief.* We find that good cause exists to grant the relief requested. We do not believe that the minimal interim benchmark relief sought by Northwest Missouri will undermine the overall policy objective of the Commission's E911 rules. We therefore grant the relief Northwest Missouri seeks and extend the September 1, 2003 deadline for initiating the sale and activation of location-capable handsets until May 31, 2004 and the November 30, 2003 deadline for ensuring that at least twenty-five percent of all new handset activations are location-capable until May 31, 2004. Northwest Missouri will continue to be subject to the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets among its subscribers.

67. **Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. (Sagebrush Carriers):** The Sagebrush Carriers share a switch used to provide analog and CDMA service in Montana.<sup>172</sup> They began selling and activating location-capable handsets ahead of the September 1, 2003 deadline, but were unsure if sufficient handsets would be available to meet the other benchmarks.<sup>173</sup> Consequently, the Sagebrush Carriers requested extensions from November 30, 2003 to May 31, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 to November 30, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; from November 30, 2004 to May 31, 2005 to ensure that one-hundred percent of all new digital handsets activated are location-capable; and from December 31, 2005 to June 30, 2006 to ensure that penetration of location-capable handsets among its subscribers reaches ninety-five percent.<sup>174</sup> In a supplement filed in response to the Commission's *Order to Stay*, the Sagebrush Carriers reported that they had been unable to obtain location-capable handsets that offer the same coverage range as handsets that do not provide location information, and that

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<sup>169</sup> See Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Aug. 25, 2003 (Northwest Missouri Waiver Petition). Northwest Missouri did not specify dates for which it expected to achieve compliance. However, we can infer that since it requested relief only from the initial September 1, 2003 deadline to commence activation and sale of location-capable handsets, and the November 30, 2003 deadline to ensure that at least twenty-five percent of handsets activated are location-capable, that it requested relief with respect to both of these deadlines until the next benchmark of May 31, 2004, by which date it must ensure that fifty percent of handsets activated are location-capable. We caution carriers to provide specific dates when filing requests for extensions of the Phase II benchmark requirements.

<sup>170</sup> See Supplement to Petition of Northwest Missouri Cellular Limited Partnership for Waiver of Section 20.18 of the Commission's Rules, CC Docket No. 94-102, filed Nov. 10, 2003 at 2.

<sup>171</sup> Staff contacted counsel for Northwest Missouri to obtain this information.

<sup>172</sup> See Sagebrush E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Aug. 1, 2003 at 1 n.1 (Sagebrush August 2003 Interim Report).

<sup>173</sup> See *id.* at 2.

<sup>174</sup> See *id.*

customers were returning the location-capable handsets because of their reduced range.<sup>175</sup> Based on these experiences with deployment, the Sagebrush Carriers reiterated their previous request for waiver.<sup>176</sup> In their most recent filing, the Sagebrush Carriers requested a permanent waiver of the December 31, 2005 ninety-five percent handset penetration requirement.<sup>177</sup>

68. *Benchmark Relief.* We find that good cause exists to grant the Sagebrush Carriers relief from the interim benchmarks as requested. As the Commission stated in the *Order to Stay*, under extraordinary conditions like those faced by the Sagebrush Carriers, additional relief may be warranted.<sup>178</sup> As the Sagebrush Carriers explain in their filings, they face certain challenges as location-capable handsets evolve to provide a greater range of service than the analog handsets currently used by the Sagebrush Carriers' subscribers.<sup>179</sup> We are, however, encouraged by the fact that the Sagebrush Carriers exceeded the Commission's requirement for beginning to sell and activate location-capable handsets, as they reported that since early November 2003 all new activations were one-hundred percent location-capable.<sup>180</sup> Moreover, since none of the PSAPs in the Sagebrush Carriers' service area is capable of receiving Phase II information,<sup>181</sup> subscribers will not be harmed by a grant of additional time. We thus find that granting limited relief to the Sagebrush Carriers will not undermine the overall policy objective of the Commission's E911 requirements.

69. For the foregoing reasons, we grant the Sagebrush Carriers' request for relief from the interim benchmarks. Specifically, we grant an extension from November 30, 2003 to May 31, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 to November 30, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; and from November 30, 2004 to May 31, 2005 to ensure that one-hundred percent of all new digital handsets activated are location-capable.

70. *Handset Penetration.* In light of our decision to grant the Sagebrush Carriers an extension of the interim benchmark requirements, we correspondingly grant them a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location-capable handsets. We recognize that the Sagebrush Carriers will require a sufficient period of time to ensure that the location-capable handsets that they sell and activate are sufficiently integrated into their customer base. Further, we acknowledge that the Sagebrush Carriers face unique challenges in satisfying the ninety-five percent handset penetration requirement. In its most recent filing, the Sagebrush Carriers reported that it continues to be their experience that subscribers are returning location-capable handsets

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<sup>175</sup> See Sagebrush Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Nov. 7, 2003 at 1-2 (Sagebrush 2003 Supplement).

<sup>176</sup> *Id.* Sagebrush reported that twenty-one percent of all new handset activations were location-capable by October 2003. *Id.*

<sup>177</sup> See Second Supplement to E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines and Request for Clarification, CC Docket No. 94-102, filed Jan. 7, 2005 at 4 (Sagebrush 2005 Supplement).

<sup>178</sup> See *Order to Stay*, 18 FCC Rcd at 20994 ¶ 17.

<sup>179</sup> See Sagebrush 2003 Supplement at 1.

<sup>180</sup> See *id.* at 4.

<sup>181</sup> See *id.* at 5.

due to their reduced range.<sup>182</sup> The Sagebrush Carriers claimed that manufacturers are not improving the coverage capabilities of location-capable handsets for use in the large, sparsely populated areas that they serve with cell sites designed to cover the largest area possible.<sup>183</sup> As a result, the Sagebrush Carriers reported a change-over rate of one to one and a half percent per month from non-location capable handsets to location-capable handsets, despite efforts to encourage adoption of location-capable handsets with contract release and better rate plan offers.<sup>184</sup>

71. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>185</sup> We believe that a thirteen-month timeframe should provide the Sagebrush Carriers with an adequate period of time to ensure that their embedded customer base uses location-capable handsets. Because we extend the Sagebrush Carriers' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to May 31, 2005, we afford the Sagebrush Carriers an additional thirteen months from this date to ensure that the handset penetration rate among their subscribers reaches ninety-five percent. Accordingly, the Sagebrush Carriers must ensure that ninety-five percent of their subscriber base has location-capable handsets by June 30, 2006.

72. We note that the relief that we are affording the Sagebrush Carriers is more limited than their requested relief. The Sagebrush Carriers requested a permanent waiver of the December 31, 2005 ninety-five percent handset penetration requirement.<sup>186</sup> While we are sympathetic to the Sagebrush Carriers' explanation that their subscribers prefer the longer-range analog handsets, we do not think a permanent waiver is consistent with maximizing consumers' access to emergency services. We remain open, however, to a more limited waiver should Sagebrush demonstrate that one is warranted.<sup>187</sup>

73. **South Canaan Cellular Communications Company, L.P. (South Canaan):** South Canaan provides AMPS and TDMA service in Pennsylvania, and is in the process of upgrading to

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<sup>182</sup> See *id.* at 2.

<sup>183</sup> See *id.* at 2-3.

<sup>184</sup> See *id.* at 4-5.

<sup>185</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

<sup>186</sup> See Sagebrush 2005 Supplement at 4. The Sagebrush Carriers requested clarification of whether carriers are to include subscribers having analog handsets in calculating the penetration among their subscribers of location-capable handsets. See *id.* We clarify that we intended no such exclusion. Therefore, in meeting the December 31, 2005 deadline, carriers must achieve ninety-five percent penetration among their subscribers of location-capable handsets, regardless of whether certain subscribers use analog handsets. We note that the Sagebrush Carriers stated it was not likely they would meet the December 31, 2005 deadline even if analog handsets were excluded from this computation. See *id.*

<sup>187</sup> See *supra* ¶ 21. Our decision does not preclude the Sagebrush Carriers from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

CDMA.<sup>188</sup> It commenced selling and activating location-capable handsets prior to the September 1, 2003 compliance deadline,<sup>189</sup> and reported that as of December 21, 2004, it was selling only compliant phones.<sup>190</sup> Essentially, then, South Canaan sought relief until December 21, 2004, of the following deadlines: the November 30, 2003 deadline to ensure that at least twenty-five percent of all new handsets activated are location-capable; the May 31, 2004 deadline to ensure that at least fifty percent of all new handsets activated are location-capable; and the November 30, 2004 deadline to ensure that one-hundred percent of all new digital handsets activated are location-capable.<sup>191</sup> South Canaan also requested an extension from December 31, 2005 until December 31, 2007 to ensure that ninety-five percent of its subscribers have location-capable handsets.<sup>192</sup>

74. South Canaan has received a request for Phase II service from one of the PSAPs in its service area, in Pike County, and has worked with this PSAP to develop a deployment schedule with a compliance date of February 15, 2005.<sup>193</sup> South Canaan also devised a subscriber education campaign, to coincide with its CDMA roll-out, to encourage analog customers to adopt location-capable handsets, which includes a marketing effort explaining that digital handset are necessary to enable the provision of location information, and incentives such as rebates for turning in analog phones.<sup>194</sup> Based on these campaigns, South Canaan anticipates that it will be able to meet the ninety-five percent activation benchmark by the end of 2007.<sup>195</sup>

75. *Benchmark Relief.* We find that good cause exists to grant South Canaan a waiver of the interim handset activation benchmark requirements. South Canaan's efforts to keep the Commission informed of its progress through its multiple progress reports indicate to us the importance that this carrier places on ensuring its compliance. South Canaan has voluntarily filed quarterly updates to keep

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<sup>188</sup> See Petition for Waiver of Section 20.18 of the Commission's Rules, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Aug. 1, 2003, at 2-3 (South Canaan 2003 Waiver Petition).

<sup>189</sup> See Supplement to Petition for Waiver of Section 20.18 of the Commission's Rules, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Nov. 10, 2003, at 2 (South Canaan 2003 Supplement).

<sup>190</sup> See E911 Phase II Interim Implementation Report, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Dec. 21, 2004, at 1-2 (South Canaan Dec. 2004 Report).

<sup>191</sup> We note that South Canaan initially had requested more extensive relief from the interim benchmarks. Specifically, South Canaan requested the following deployment schedule: begin selling and activating location-capable CDMA handsets by January 1, 2005; ensure that twenty-five percent of new CDMA handsets activated are location-capable by March 31, 2005; ensure that fifty percent of new CDMA handsets activated are location-capable by September 30, 2005; ensure that one-hundred percent of all new CDMA handsets activated are location-capable by March 31, 2006; and ensure that ninety-five percent of CDMA subscribers have location-capable handsets by December 31, 2007. See South Canaan 2003 Waiver Petition at 8. It subsequently modified its request in light of its progress in deploying its CDMA upgrade. See South Canaan Dec. 2004 Report at 1-2.

<sup>192</sup> See South Canaan 2003 Waiver Petition at 8; see also E911 Phase II Interim Implementation Report, South Canaan Cellular Communications Company, L.P., CC Docket No. 94-102, filed Jan. 15, 2004, at 3 (South Canaan Jan. 2005 Report).

<sup>193</sup> See South Canaan Jan. 2005 Report at 2.

<sup>194</sup> See *id.* at 2. The campaign will include free and heavily-discounted location-capable handsets to customers that enter into a new two-year agreement for service. *Id.*

<sup>195</sup> See *Id.*

the Commission current on both its upgrade to CDMA and its work with the local PSAPs in its area. We are encouraged by South Canaan's imminent completion of its CDMA upgrade, based upon the timeframes it has provided the Commission in its quarterly reports.<sup>196</sup> Such diligence evidences South Canaan's commitment to achieving full compliance with the Commission's E911 requirements, which is the type of showing the Commission explained it would need from Tier III carriers to grant additional relief.<sup>197</sup> Additionally, we find that South Canaan's diligence in working with and informing the PSAPs in its service area of its deployment schedule signals good faith efforts to achieve compliance with the Commission's requirements.<sup>198</sup>

76. For these reasons, we grant South Canaan relief from the interim benchmarks. Specifically, we grant South Canaan an extension from November 30, 2003 until December 21, 2004 to ensure that at least twenty-five percent of all new handsets activated are location-capable; from May 31, 2004 until December 21, 2004 to ensure that at least fifty percent of all new handsets activated are location-capable; and from November 30, 2004 until December 21, 2004 to ensure that one-hundred percent of all new digital handsets activated are location-capable.

77. *Handset Penetration.* In light of our decision to grant South Canaan an extension of the interim benchmark requirements, we correspondingly grant South Canaan a limited extension of the December 31, 2005 deadline for ensuring that ninety-five percent of its subscriber base have location-capable handsets. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>199</sup> We believe that a thirteen-month timeframe should provide South Canaan with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend South Canaan's deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2004, we afford South Canaan an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, South Canaan must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2006.

78. We note that this relief from the ninety-five percent handset penetration requirement is more limited than South Canaan requested. South Canaan sought relief from the ninety-five percent handset penetration deadline from December 31, 2005 until December 31, 2007. We do not believe that such an extended period of time is adequately supported or necessary. Further, we believe that our countervailing public policy interest in ensuring that carriers comply with the location-capable handset

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<sup>196</sup> See South Canaan Jan. 2005 Report at 1 (anticipating digital conversion of its remaining site by February 15, 2005).

<sup>197</sup> See *supra* ¶ 10.

<sup>198</sup> See South Canaan Dec. 2004 Report at 1. See also *supra* ¶ 10.

<sup>199</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

penetration requirement as quickly as possibly overrides South Canaan's request for more protracted relief.<sup>200</sup>

79. **South No. 5 RSA LP dba Brazos Cellular Communications, LLC (Brazos):** Brazos provides TDMA service in rural Texas and is upgrading to CDMA.<sup>201</sup> Brazos sought the following extensions of the Commission's deadline: from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 until September 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.<sup>202</sup> Brazos does not request relief from the ninety-five percent requirement, indicating that it will use its best efforts to encourage subscribers to convert.<sup>203</sup>

80. *Benchmark Relief.* We find good cause exists to grant Brazos a limited waiver to permit it to coordinate its location-capable handset deployment with its CDMA upgrade. Brazos' need for additional time is due in part to its transitioning from a TDMA air interface to CDMA.<sup>204</sup> Brazos maintained that the migration from TDMA technology by the larger carriers resulted in reluctance on the part of equipment manufacturers to develop location-capable handsets for the TDMA air-interface.<sup>205</sup> Brazos decided to transition its network to the CDMA air interface, a process that will take some time to implement. The Commission recognized that the transition from one air interface to another takes some time to implement, and requested that carriers seeking additional relief for this purpose provide a plan to achieve full compliance, which Brazos has provided.<sup>206</sup>

81. We are also encouraged by Brazos' efforts to coordinate its deployment plan with its local PSAPs. Brazos stated that the local PSAPs are agreeable to its Phase II schedule, which will achieve Phase II capability prior to PSAP readiness.<sup>207</sup> Brazos stated that it has discussed its deployment

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<sup>200</sup> See *supra* ¶ 21. Our decision does not preclude the South Canaan from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>201</sup> See South No. 5 RSA LP Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 8, 2003 at 2 (Brazos 2003 Waiver Petition).

<sup>202</sup> See Further Supplement to South No. 5 RSA LP Petition and Request For Additional Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 8, 2004, at 3 (Brazos June 2004 Supplement). Brazos initially requested interim relief to extend the deadline to begin selling and activating handsets and the deadline to meet the twenty-five percent requirement to July 1, 2004; to extend the fifty percent deadline to September 1, 2004; and to extend the one-hundred percent deadline to December 31, 2004. See Brazos 2003 Waiver Petition at 9.

<sup>203</sup> See Brazos June 2004 Supplement at 4. In an earlier filing, Brazos indicated that it was unlikely to be fully Phase II compliant by December 31, 2005, because many of its customers, approximately fifteen percent, use three watt analog phones and would be reluctant to accept location-capable digital handsets due to their relatively smaller ranges. See Brazos 2003 Waiver Petition at 3-4.

<sup>204</sup> See Brazos 2003 Waiver Petition at 2.

<sup>205</sup> See Brazos 2003 Supplement at 2.

<sup>206</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>207</sup> See Brazos June 2004 Supplement at 4.

plan with the Texas Council of Governments, which coordinates E911 efforts in the state of Texas, and that it and the local PSAPs are aware of the transition period Brazos has set out in its requests.<sup>208</sup> In evaluating Brazos' waiver request we have taken into account its consultation with PSAPs in its service area and the Texas Council of Governments, as such consultation is an important factor in determining whether a waiver is warranted.<sup>209</sup>

82. For the foregoing reasons, we find that granting relief to Brazos would not undermine our policy objective of ensuring access to E911 service. We therefore, grant Brazos' requests for the following extensions: from September 30, 2003 to July 1, 2005 to begin selling and activating location-capable handsets; from November 30, 2003 to July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to September 1, 2005 to ensure that at least fifty percent handsets activated are location-capable; and from November 30, 2004 to December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

83. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>210</sup> We believe that a thirteen-month timeframe should provide Brazos with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend Brazos' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford Brazos an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, Brazos must ensure that ninety-five percent of its subscriber base has location-capable handsets by January 31, 2006.<sup>211</sup>

84. **Wilkes Cellular, Inc. (Wilkes):** Wilkes provides analog service in rural Georgia. Wilkes stated that it receives switching services from Alltel and therefore must follow Alltel in using a handset-based solution.<sup>212</sup> Wilkes added that it would utilize a handset solution and install a digital overlay over its analog cellular network, with the digital network expected to be in place by early 2004.<sup>213</sup> While Wilkes did not state which digital interface it will be using, we infer from its association

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<sup>208</sup> See *id.*

<sup>209</sup> See *supra* ¶ 29.

<sup>210</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

<sup>211</sup> Because we relied on our established rules and precedent in granting the relief of the handset penetration deadline to Brazos, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. Our decision, however, does not preclude Brazos from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>212</sup> See E911 Phase II Interim Report and Request for Waiver of the Compliance Deadlines, CC Docket No. 94-102, filed Aug. 1, 2003, at 1-2 (Wilkes Interim Report).

<sup>213</sup> See *id.*

with Alltel that it will upgrade to CDMA technology. Wilkes further stated that it had not received a Phase II request, but anticipated that Phase II service would be available by April 1, 2004.<sup>214</sup>

85. Wilkes requested a seven-month extension of each of the benchmarks for activating location-capable handsets.<sup>215</sup> Wilkes thus requested that we grant extensions of the following deadlines: (1) from September 1, 2003 until April 1, 2004 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until June 30, 2004 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until December 31, 2004 to ensure that at least fifty percent of handsets activated are location-capable, and (4) from November 30, 2004 until June 30, 2005 to ensure that one-hundred percent of handsets sold are location capable.

86. *Benchmark Relief.* We find good cause exists to grant Wilkes waiver relief to permit it to coordinate its location-capable handset deployment with its CDMA upgrade. Wilkes' need for additional time is due to transitioning from an analog air interface to CDMA. The Commission recognized that the transition from one air interface to another takes some time to implement, and requested that carriers seeking additional relief for this purpose provide a plan to achieve full compliance, which Wilkes has provided. Furthermore, since Wilkes had not yet received a request for Phase II service, we find that granting the relief requested would not undermine our policy objective of ensuring access to E911 service. We therefore, grant Wilkes' requests for the following extensions: from September 30, 2003 to April 1, 2004 to begin selling and activating location-capable handsets; from November 30, 2003 to June 30, 2004 to ensure that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to December 31, 2004 to ensure that at least fifty percent handsets activated are location-capable; and from November 30, 2004 to June 30, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

87. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>216</sup> We believe that a thirteen-month timeframe should provide Wilkes with an adequate period of time to ensure that its embedded customer base uses location-capable handsets. Because we extend Wilkes' deadline for ensuring that one-hundred percent of all new handset activations are location-capable to June 30, 2005, we afford Wilkes an additional thirteen months from this date to ensure that the handset penetration rate among its subscribers reaches ninety-five percent. Accordingly, Wilkes must ensure that ninety-five percent of its subscriber base has location-capable handsets by July 31, 2006.<sup>217</sup>

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<sup>214</sup> See *id.* at 2-3.

<sup>215</sup> See *id.* at 2.

<sup>216</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.

<sup>217</sup> Because we relied on our established rules and precedent in granting the relief of the handset penetration deadline to Wilkes, we find it unnecessary to address the standard articulated in the *ENHANCE 911 Act*. Our decision, however, does not preclude Wilkes from seeking additional relief of the handset penetration deadline under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

88. **Wireless Communications Venture (WCV):** WCV provides service in Minnesota.<sup>218</sup> In a June 2004 amendment to its waiver petition, WCV reported that the upgrade of its network from TDMA to CDMA was complete.<sup>219</sup> WCV sought an extension of the date to begin selling and activating location-capable handsets from September 30, 2003 to September 27, 2004.<sup>220</sup> It also sought an extension from November 30, 2003 to September 27, 2004 to meet the requirement that at least twenty-five percent of handsets activated are location-capable; and from May 31, 2004 to September 27, 2004 to meet the requirement that at least fifty percent of handsets activated are location-capable.<sup>221</sup>

89. *Benchmark Relief.* We find that good cause exists to grant the relief sought by WCV. We are persuaded by WCV's petition because it set out a plan to achieving full compliance.<sup>222</sup> The schedule WCV set out in its petition will allow it to meet the final benchmark of December 31, 2005, when it must achieve a ninety-five percent penetration rate for location-capable handsets among its subscribers. We thus find that allowing this carrier to focus its efforts on achieving full compliance will better serve the Commission's interest in ensuring ubiquitous access to E911 service.

90. Moreover, we are persuaded that WCV is acting in good faith in requesting additional relief, based on its reported efforts to coordinate its deployment schedule with the administrator of the Minnesota E-911 Statewide Program.<sup>223</sup> WCV and the administrator of the Minnesota Statewide 9-1-1 Project agreed upon a deployment timetable.<sup>224</sup> In the *Order to Stay*, the Commission explained that carriers seeking additional time would be expected to coordinate their efforts with the state and local E911 coordinators and all affected local PSAPs.<sup>225</sup>

91. For these reasons, we grant WCV's waiver request for relief from the interim deadlines for the sale and activation of location-capable handsets. Specifically, we grant WCV the following relief: from September 30, 2003 to September 27, 2004 to begin selling and activating location-capable handsets; from November 30, 2003 to September 27, 2004 to meet the requirement that at least twenty-five percent of handsets activated are location-capable; from May 31, 2004 to September 27, 2004 to meet the requirement that at least fifty percent of handsets activated are location-capable; and from November 30, 2004 to December 31, 2004 by which one-hundred percent of all handsets activated are location-capable.

<sup>218</sup> See Wireless Communications Venture Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 28, 2003, at 5 (WCV 2003 Waiver Petition).

<sup>219</sup> See Amendment to Wireless Communications Venture Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed June 30, 2004, at 2 (WCV 2004 Amended Waiver Petition).

<sup>220</sup> See *id.* at 1.

<sup>221</sup> *Id.* In its original petition, WCV also sought relief from the one-hundred percent benchmark to December 31, 2004. See WCV 2003 Waiver Petition at 10. WCV subsequently reported that it met this requested deadline. See Second Supplement to Wireless Communications Venture Petition for Waiver of Section 20.19(g) of the Commission's Rules, CC Docket No. 94-102, filed Jan. 24, 2005, at 1.

<sup>222</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 27.

<sup>223</sup> See WCV Second Interim Report Regarding E911 Phase II deployment Wireless Communications Venture, CC Docket No. 94-102, filed Jan. 14, 2004, at 2 (WCV Second Interim Report).

<sup>224</sup> *Id.* at 2-3.

<sup>225</sup> See *Order to Stay*, 18 FCC Rcd at 20997 ¶ 28.

## B. Category 2: Carriers electing network-based solutions

92. The next category of Tier III carriers consists of requests for relief by carriers employing network-based solutions. By definition, these solutions work with existing handsets and thus do not require handset replacement or upgrades. Carriers are permitted to phase in deployment over an eighteen month period and, as compared to carriers utilizing handset-based technologies, are allowed to meet the broader location parameters of the accuracy standard for network-based technologies.<sup>226</sup> Once deployed, network-based solutions reportedly can be readily adapted to support multiple air interfaces and network upgrades, *e.g.*, analog, TDMA, CDMA or GSM.<sup>227</sup>

93. **Highland Cellular, LLC (Highland):** Highland operates a TDMA network in rural West Virginia, and is transitioning to a GSM network.<sup>228</sup> It requested that the Commission grant a two year extension of the Phase II deployment and accuracy requirements for its GSM network.<sup>229</sup> Highland set forth an eight-step plan for deploying its GSM network-based solution, and also a schedule for compliance, anticipating that its TDMA customers would begin migrating to its GSM network in November 2004.<sup>230</sup>

94. In its subsequent January 15, 2004 Interim Report, Highland stated it was able to launch its GSM network in October 2003, and that twelve percent of its customer base already had begun the transition from TDMA to GSM phones.<sup>231</sup> With respect to its Phase II status, Highland stated that it was still reviewing vendor and technology options for network-based solutions based on either Time Delay of Arrival (TDOA) or Timing Advance/Network Measurement Report (TA/NMR) technologies.<sup>232</sup>

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<sup>226</sup> See 47 C.F.R. § 20.18(h)(1) (requiring an accuracy of one-hundred meters for sixty-seven percent of calls, and 300 meters for ninety-five percent of calls).

<sup>227</sup> See, *e.g.*, Andrew Corporation description of its Geometrix technology, at [http://www.andrew.com/products/wireless\\_call\\_loc/geometrix\\_e911\\_upgrd.aspx](http://www.andrew.com/products/wireless_call_loc/geometrix_e911_upgrd.aspx).

<sup>228</sup> See Request of Highland Cellular, LLC for A Limited Waiver and Extension of the Commission's Phase II Rules, CC Docket No. 94-102, filed Aug. 29, 2003, at 1-2 (Highland Waiver Request).

<sup>229</sup> See Highland Waiver Request at 2-3. Although Highland did not provide specific dates for extension of our requirements, we presume that, by requesting an additional two years, it asked for the following relief: (1) from September 1, 2003 to September 1, 2005 to provide Phase II service to at least fifty percent of the PSAP's coverage area or population, or within six months of a PSAP request, whichever is later, and (2) from September 1, 2004 to September 1, 2006 to provide Phase II service to one-hundred percent of the PSAP's coverage area or population, or within eighteen months of a PSAP request, whichever is later.

<sup>230</sup> *Id.* at 4-5. The eight steps are as follows: (1) obtaining proposals from GSM-based network location vendors; (2) obtaining vendor engineering studies on achievable accuracy levels; (3) selecting a vendor based on pricing and technical details; (4) identifying a deployment plan; (5) conducting the necessary tower and cell site upgrades; (6) installing equipment at cell sites and within the switch; (7) network integration and testing; and (8) testing with PSAPs.

<sup>231</sup> See Highland Cellular, Inc. E911 Interim Compliance Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (Highland 2004 Interim Report).

<sup>232</sup> See *id.* at 2. TDOA uses equipment installed at carrier base stations to triangulate a call's location based on differences in the arrival times of a handset's signal at three or more of the cell sites. TA/NMR is a refinement of GSM-based Phase I E911 service, identifying the cell and sector and then using timing information and signal strength information from adjacent cells to calculate an improved location solution.

Highland further reported that it had received Phase II requests from six PSAPs, and that it had been actively working with the PSAPs in its community with respect to E911 deployment.<sup>233</sup> Highland projected that network-based solutions will meet the accuracy requirements in only three of the ten counties it is licensed to serve.<sup>234</sup> However, Highland indicated that the GSM cell sites it was deploying would provide significant improvements in accuracy as compared to the TDMA segment of its system.<sup>235</sup>

Highland also added that its lenders may refuse to finance additional Phase II deployment costs.<sup>236</sup> Highland claimed that the foregoing factors will make it very challenging to meet the current Phase II accuracy requirements for a network-based solution.<sup>237</sup>

95. In its most recent report, Highland stated that the migration of its customer base to GSM increased to fifty-two percent during 2004, and projected this number to increase to eighty percent by the end of 2005.<sup>238</sup> However, Highland reported that despite making progress in working with and evaluating network-based solutions from various vendors, it believed that the topography and cell density of its network was such that none of the technology options would allow the company to meet the FCC's accuracy requirements.<sup>239</sup> Highland added that it had reached accord with the PSAPs that the public would be best served by deployment of technology that provides the best long-term accuracy standard, and that it continued to be engaged in further discussions with technology vendors.<sup>240</sup>

96. *Deployment of Network Equipment.* We find that Highland has made substantial progress in converting its network to GSM and has worked earnestly, in cooperation with the PSAPs, to seek a network-based solution that would meet the Commission's Phase II accuracy requirements. Highland has engaged in an extensive process of furnishing its vendors technical network information, while constructing new GSM cell sites, to find a way to meet the Commission's accuracy requirements.<sup>241</sup> Highland submitted evidence that with its current cell site layout, in many areas of its network there is insufficient RF signal to permit triangulation to work.<sup>242</sup> Highland also reported that the manufacturer will not support an ALI TDMA solution for either network-based or handset-based technologies.<sup>243</sup>

97. Based on the foregoing reasons, we grant Highland an extension from September 1, 2003 to September 1, 2005 to provide Phase II service to at least fifty percent of either the PSAP's coverage

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<sup>233</sup> See *id.*

<sup>234</sup> See *id.* at 4-5.

<sup>235</sup> See *id.* at 5.

<sup>236</sup> See *id.*

<sup>237</sup> See *id.*

<sup>238</sup> See Highland Cellular, Inc. Update to E911 Interim Compliance Report, CC Docket No. 94-102, filed Feb. 9, 2005, at 1.

<sup>239</sup> See *id.* at 2.

<sup>240</sup> See *id.*

<sup>241</sup> See Highland 2004 Interim Report at 2-3.

<sup>242</sup> See *id.* at 4.

<sup>243</sup> See Highland Waiver Request at 4.

area or its population, or within six months of a PSAP request, whichever is later, and from September 1, 2004 to September 1, 2006 to provide Phase II service to one-hundred percent of a PSAP's coverage area or population, or within eighteen months of a PSAP request, whichever is later.

98. **N.E. Colorado Cellular, Inc. (NECC):** In its initial waiver request, NECC reported that it operated an AMPS network in Colorado and acquired a CDMA network in Nebraska, and that it was converting both networks to GSM.<sup>244</sup> NECC elected to deploy a network-based location solution, but for its GSM networks only.<sup>245</sup> NECC proposed to implement Phase II service in Colorado within six months of a valid PSAP request, and by January 2005 in Nebraska.<sup>246</sup> NECC later estimated that Phase II service would first be available on its GSM network by November 2004.<sup>247</sup>

99. In both states, however, NECC stated that it would be unable to meet the Phase II accuracy standards, due to the inability to obtain the proper cell site triangulation.<sup>248</sup> Particularly in Nebraska, NECC stated that coverage beyond the major highways had just begun, and that its ability to be in compliance with the accuracy standards would improve as more towers in its planned 300 tower build-out were constructed.<sup>249</sup> NECC thus requested a waiver of the accuracy requirements for both its Colorado and Nebraska service areas through 2007, to allow it to provide location data within 500 meters for fifty percent of the calls,<sup>250</sup> instead of one-hundred meters for sixty-seven percent of calls and 300 meters for ninety-five percent of calls, as required under Section 20.18(h)(1).

100. NECC indicated that it was communicating regularly and had a good working relationship with the PSAPs in its service areas.<sup>251</sup> In Colorado, NECC indicated that it had received four Phase II requests and would be implementing Phase II service for two of the PSAPs as of November 15, 2004, and the remaining two by January 15, 2005.<sup>252</sup> NECC stated that these implementations are in the

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<sup>244</sup> See Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 5, 2003, at 2 (NECC Waiver Request).

<sup>245</sup> See Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (NECC Jan. 2004 Interim Report); N.E. Colorado Cellular, Inc. Petition for Extension of the Implementation Schedules Beginning September 1, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 17, 2004, at 2 (NECC 2004 Petition). NECC explained that the AMPS product line in Colorado does not support a network-based Phase II location solution. See NECC Jan. 2004 Interim Report at 1.

<sup>246</sup> See NECC Waiver Request at 8.

<sup>247</sup> See NECC Jan. 2004 Interim Report at 2.

<sup>248</sup> See *id.*; NECC Jan. 2004 Interim Report at 1-2.

<sup>249</sup> See NECC Jan. 2004 Interim Report at 1-2.

<sup>250</sup> See N.E. Colorado Cellular, Inc. Supplement to Petition for Extension of the Implementation Schedule for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 10, 2003, at 4 (NECC 2003 Supplement).

<sup>251</sup> See NECC Jan. 2004 Interim Report at 1.

<sup>252</sup> See NECC 2004 Petition at 2.

portion of its service areas where both GSM and AMPS service are provided.<sup>253</sup> As for Nebraska, NECC reported no Phase II requests, but expected five requests in May 2004.<sup>254</sup>

101. In a separate request filed in 2004, NECC sought a waiver specific to its network in Colorado to permit it to migrate analog customers to its GSM platform.<sup>255</sup> NECC expected seventy percent of its subscriber base in Colorado to be migrated to GSM by the end of 2004.<sup>256</sup> However, NECC cited to certain analog customers who desire to retain their analog phones, favoring coverage over Phase II service capability.<sup>257</sup> NECC added that it expected to complete its GSM upgrade by first quarter 2005,<sup>258</sup> and that there was no Phase II solution for the analog portion of its network.<sup>259</sup> NECC foresaw a need for a two-year timetable to migrate the remainder of its analog customers to digital.<sup>260</sup>

102. *Deployment of Network Equipment.* First, with respect to the GSM portions of its network, NECC does not require an extension of the Commission's Phase II rules and thus we dismiss this request. NECC indicated it would have Phase II service capability in its GSM network by November 2004, and with respect to its Colorado service areas, that it has responded, or would be responding, to the four PSAP requests. Moreover, in Nebraska, if NECC received the PSAP requests expected in May 2004, we assume, as we have not been notified otherwise, that NECC implemented Phase II service for those PSAPs as well.<sup>261</sup> Further, NECC's filings indicate that, in its Colorado service areas, its GSM network deployment is proceeding close to the schedule that it has anticipated. In addition, the migration of its customer base to the GSM network is significantly progressing.

103. However, with respect to its analog customers, we conclude that grant of a waiver regarding NECC's deployment of a Phase II network solution work is warranted.<sup>262</sup> As NECC indicated, there is no Phase II solution for analog handsets. Further, we find that NECC diligently has pursued a program of upgrading its analog network to GSM while undertaking efforts to migrate its analog customers to GSM. Therefore, we grant NECC an extension of two years from the date of its request, or until November 17, 2006, to ensure that all of its analog customers are transitioned to GSM and thus are offered Phase II services.

104. *Accuracy Requirements.* We deny NECC's request for waiver of the accuracy requirement through 2007 because we do not believe it was sufficiently supported and, in any event, is overbroad. NECC did not provide any testing data or other evidence to support its request for an accuracy level of 500 meters for fifty percent of calls, or for the need for relief through 2007. In

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<sup>253</sup> See *id.*

<sup>254</sup> See NECC Jan. 2004 Interim Report at 1.

<sup>255</sup> See NECC 2004 Petition at 2.

<sup>256</sup> See NECC Jan. 2004 Interim Report at 2.

<sup>257</sup> See NECC 2004 Petition at 3-4.

<sup>258</sup> See *id.* at 3.

<sup>259</sup> See *id.* at 4; NECC 2003 Supplement at 2-3.

<sup>260</sup> See NECC 2004 Petition at 4.

<sup>261</sup> See NECC 2003 Supplement at 4.

<sup>262</sup> See 47 C.F.R. § 20.18(f).

addition, NECC submitted no information from its technology vendor concerning the levels of accuracy that can reasonably be achieved as its GSM network is built out. Such information is of particular significance to our consideration of this waiver request.<sup>263</sup> NECC did not distinguish between those segments of its GSM network that already are built, and which presumably could achieve better accuracy, and those segments not upgraded with GSM. Moreover, given its representations of its deployment schedule for approximately 300 additional towers for its Nebraska build-out beyond the major highways, NECC should have been able to develop a more specific schedule for meeting the Phase II requirements, rather than requesting the blanket relief it seeks through 2007.

105. While we do not believe that NECC has met our standards for waiver of the Commission's accuracy requirements, we note that we would be receptive to a renewed request for waiver that would contain the specific information necessary to justify such a request as described above. Specifically, NECC should provide testing data or other information from a technology vendor to demonstrate its inability to meet the accuracy requirements, and provide specific plans towards meeting the accuracy requirements.<sup>264</sup> We also are mindful of the fact that NECC reported that it will work with the PSAPs regarding the location accuracy data that it will be able to achieve as it builds out its GSM network,<sup>265</sup> and we encourage NECC to continue these efforts.

106. **Southern Illinois RSA Partnership dba First Cellular of Southern Illinois (First Cellular):** First Cellular operates an AMPS and CDMA network that is being converted to GSM. In an August 26, 2003 Petition, First Cellular requested a waiver of the requirement that carriers deploying a network-based solution follow a schedule beginning September 1, 2003, to ensure they provide Phase II service to at least fifty percent of the PSAP's coverage area or population, and September 1, 2004 to ensure they provide Phase II service to one-hundred percent of the PSAP's coverage area or population.<sup>266</sup> First Cellular reported that the vendor initially selected for a network-based Phase II solution unexpectedly determined that it was unable to solve compatibility problems between its equipment and First Cellular's cellular system equipment.<sup>267</sup> First Cellular requested a waiver of up to twenty-four months to deploy its network-based solution.

107. In a November 10, 2003 Supplement, First Cellular stated that it planned to deploy a Phase II solution for CDMA and AMPS by summer 2004, with GSM Phase II deployment to occur as soon as possible upon completion of the GSM overlay throughout its service area.<sup>268</sup> In a January 14, 2004 Interim Report, First Cellular projected installation of the GSM network within seven to twenty

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<sup>263</sup> See *supra* ¶ 9.

<sup>264</sup> See *supra* ¶ 10.

<sup>265</sup> See January 2004 Interim Report at 1.

<sup>266</sup> See Southern Illinois RSA Partnership dba First Cellular of Southern Illinois Petition for Extension of the Implementation Schedule Beginning September 1, 2003 for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Aug. 26, 2003, at 1 (First Cellular August 2003 Petition).

<sup>267</sup> See *id.* at 3.

<sup>268</sup> See Southern Illinois RSA Partnership dba First Cellular of Southern Illinois Supplement to Petition for Extension of the Implementation Schedule for Phase II of Enhanced 911 Services, CC Docket No. 94-102, filed Nov. 10, 2003, at 3 (representing that the Phase II solution from its selected vendor would support its planned GSM system as well as the current AMPS and CDMA systems).

months, with initial deployment in summer 2004.<sup>269</sup> First Cellular also reported it was negotiating funding through a capital lease agreement and planned to submit costs for Phase II deployment to the State of Illinois for potential reimbursement.<sup>270</sup>

108. *Deployment of Network Equipment.* First Cellular also submitted that it had received seven Phase II requests, but that the requesting PSAPs were not yet ready to receive or use Phase II data.<sup>271</sup> Consequently, we dismiss First Cellular's request for waiver, without prejudice, as unnecessary. Carriers only are required to respond to valid PSAP requests.<sup>272</sup> Furthermore, carriers have six months following a valid PSAP request to provide E911 service to at least fifty percent of the PSAP's coverage area or population, and eighteen months to provide E911 service to one-hundred percent of the PSAP's coverage area or population.

### C. Category 3: Carriers Operating Roaming-Only Networks

109. Twelve carriers, operating under a "carriers' carrier" business model (the Commnet Carriers), sought relief from various E911 requirements.<sup>273</sup> Under the carriers' carrier business model, each of the Commnet Carriers provides roaming-only service to subscribers of other carriers and has no subscribers of its own.<sup>274</sup> Each of the carriers utilizes a switching facility locating outside of its market and thus some distance from the PSAP.<sup>275</sup> Further, each operates in rural areas using analog, TDMA, or GSM technologies.<sup>276</sup> The Commnet Carriers stated that handset-based solutions are not available for any of their network technologies.<sup>277</sup> In addition, due to the nature of their networks, they also claimed that network-based solutions, necessarily requiring triangulation, are not feasible.<sup>278</sup> Only one of the Commnet Carriers, MoCelCo, LLC, has received a Phase II request.<sup>279</sup>

<sup>269</sup> See Enhanced 911 Tier III Interim Report, CC Docket No. 94-102, filed Jan. 14, 2004, at 2.

<sup>270</sup> See *id.* at 2.

<sup>271</sup> See *id.* at 1.

<sup>272</sup> Under the Commission's rules, a carrier is required to provide E911 only if the PSAP requesting service is capable of receiving and utilizing the data and a mechanism for recovering PSAP costs is in place. 47 C.F.R. § 20.18(j).

<sup>273</sup> See Petition for Limited and Temporary Waiver of Deadlines for Implementation of Phase II E911 on the Same Basis as Other Tier III Wireless Carriers, and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Sept. 9, 2002 (Commnet Petition); Amendment and Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911 and for Waiver of *King County* Demarcation Point Ruling, CC Docket No. 94-102, filed Aug. 15, 2003 (Commnet Amendment). The carriers, jointly filing, include Commnet Wireless, Inc.; Commnet of Arizona, LLC; Commnet of Delaware, LLC; Elbert County Wireless, LLC; Chama Wireless LLC; Excomm, LLC; Commnet PCS, Inc.; MoCelCo, LLC; Tennessee Cellular Telephone Company; Commnet Capital, LLC; Commnet of Florida, LLC; and Prairie Wireless, LLC. See Commnet Amendment at 2-3.

<sup>274</sup> See Commnet Amendment at 1, 4.

<sup>275</sup> See *id.* at ii, 3.

<sup>276</sup> See *id.* at 3, 4.

<sup>277</sup> See *id.* at 4.

<sup>278</sup> See *id.* at 4-5.

<sup>279</sup> See *id.* at 5.

110. The Commnet Carriers requested a permanent or long-term (at least 5 years) waiver of the Phase II requirements.<sup>280</sup> Alternatively, they requested that they be declared in compliance with all E911 obligations, on the basis that the Commission's E911 rules were not intended to apply to carriers providing roaming-only service.<sup>281</sup> The Commnet Carriers also sought a waiver of the Commission's ruling in the *King County* case that the 911 selective router is the demarcation point for allocating costs between a wireless carrier and a PSAP E911 obligations.<sup>282</sup>

111. *Applicability of Phase II Requirements.* The Commission has made clear that wireless carriers providing services similar to commercial mobile radio services are subject to the E911 rules.<sup>283</sup> Specifically, the Commission specified criteria for determining which licensees should be subject to its E911 requirements. It required compliance by those licensees: (1) that offered real-time, two-way switched voice service, interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services; (2) whose customers clearly expected access to 911 and E911; (3) that competed with analog and broadband PCS providers; and (4) where it is technically and operationally feasible to provide enhanced 911 service.<sup>284</sup>

112. All of these criteria apply to carriers providing roaming-only service. First, roaming-only service, like service provided by licensees with customers of their own, interconnects to the public switched network. Further, roaming-only service provided by carriers' carriers is indistinguishable from service provided by the caller's "home" wireless service provider, and, therefore, consumers of roaming-only service would have the same expectations as when using their home network with respect to having access to E911 service. Additionally, carriers' carriers clearly compete with other facilities-based CMRS licensees. Finally, as other facilities-based licensees have shown through their deployment of the infrastructure necessary for E911 to occur, it is technically feasible to comply with the Commission's rules, and, as explained more fully below, it also is technically feasible for carriers' carriers to comply as well. Accordingly, we reject the Commnet Carriers' argument that the Commission's E911 rules were not intended to apply to roaming-only service providers.

113. *Phase II Requirements.* Having established that carriers' carriers are subject to the Commission's E911 requirements, we next address the Commnet Carriers' request for a permanent or long-term extension to comply with the Phase II rules. In view of the critical importance of the Commission's E911 rules to public safety, the Commission has insisted that carriers seeking relief must provide specific evidence in support of their request, as well as a clear path to full compliance, and cannot rely on generalized assertions of technical infeasibility.<sup>285</sup> The Commnet Carriers' petition fails to meet this standard. The Commnet Carriers made only conclusory assertions that they have no handset-

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<sup>280</sup> See *id.* at 6.

<sup>281</sup> See *id.* at 6-7.

<sup>282</sup> See Commnet Amendment at 8 (citing Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 14789, 14792-93, ¶¶ 8, 10 (2002) (*King County Order*)).

<sup>283</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, IB Docket No. 99-67, *Report and Order and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 25340, 25346 ¶¶ 15-16.

<sup>284</sup> *Id.* at 25343.

<sup>285</sup> See *supra* ¶ 10.

based or network-based options to provide Phase II service, presented no plan whatsoever for compliance, and offered no evidence of any efforts to work with vendors to investigate potential solutions. We would require substantial further justification, on a case-by-case basis, and in more focused requests for relief, in order to consider these waiver requests, as well as information describing efforts to cooperate with PSAPs requesting Phase II service. Accordingly, we deny the Commnet Carriers' request for a permanent or long-term waiver of the Commission's Phase II rules. We note that we would be receptive to renewed and specific requests for waiver, provided such requests meet our waiver standards.

114. *King County Demarcation Point.* We also deny the Commnet Carriers' request for a waiver of the requirements set forth in the Commission's *King County Order*. The *King County Order* established the 911 selective router as the demarcation point for allocating E911 implementation costs between wireless carriers and PSAPs, in the absence of an agreement to the contrary between the parties.<sup>286</sup> The Commnet Carriers contended that, given that their switches are located outside of their service areas, it would be prohibitively expensive for them to establish dedicated facilities between their mobile switching centers and the 911 selective router.<sup>287</sup> The Commnet Carriers requested that the Commission grant them a waiver of the *King County Order* such that the demarcation point is the wireless carrier switch, rather than the 911 selective router.<sup>288</sup> They also argued that although the *King County Order* allows for alternate cost allocation arrangements between carriers and PSAPs, the PSAPs have no incentive to even engage in negotiations to share these costs.<sup>289</sup>

115. In the *King County Order*, the Commission specifically considered and rejected the establishment of a different demarcation point for small rural wireless carriers.<sup>290</sup> The Commission concluded that, since the risk incurred where a dispatcher cannot locate a 911 wireless caller does not vary with the size of the wireless carrier that picks up the call, the E911 requirements should apply equally to small and rural carriers and to larger carriers.<sup>291</sup> Furthermore, the Commission advised that, when its rules impose a disproportionate burden on a particular carrier, the carrier should work with the public safety entities involved to mitigate the burden, and, if necessary, seek individual relief from the Commission.<sup>292</sup> We note that the Commnet Carriers have provided no evidence that they have even attempted to work with the PSAPs with respect to implementation costs. The Commnet Carriers have not adequately substantiated their request for waiver of the demarcation point established in the *King County Order*. We note that the Commnet Carriers have assumed worst-case conditions, e.g., that lengthy dedicated T-1 lines are the only way to deliver E911 calls to the 911 selective router, that no cost recovery from other available federal, state, or local sources is available, and that the PSAPs will not be willing to negotiate solutions for sharing implementation costs. Moreover, the Commnet Carriers have not provided specific information regarding the actual or projected cost of the E911 infrastructure they

<sup>286</sup> See *King County Order*, 17 FCC Rcd at 14792-93, ¶¶ 8, 10.

<sup>287</sup> See Commnet Petition at 13-14; Commnet Amendment at 9-10.

<sup>288</sup> See Comment Petition at ii. Alternatively, the Commnet Carriers suggested that PSAPs should be obligated to pay one-half the cost of separate, dedicated T-1 connections for 911 traffic. See Commnet Amendment at 6 n. 10.

<sup>289</sup> See Commnet Amendment at 10 n. 15.

<sup>290</sup> See *King County Order*, 17 FCC Rcd at 14796 ¶ 18.

<sup>291</sup> See *id.*

<sup>292</sup> See *id.*

would incur. For the foregoing reasons, we deny the Commnet Carriers' waiver request to establish the mobile switching center as the demarcation point.

**D. Category 4: Carriers Electing a Handset-Based Solution in Conjunction with a GSM Upgrade**

116. The three nationwide Tier I carriers using the GSM air interface initially planned to employ a handset-based location technology called Enhanced-Observed Time Difference (E-OTD).<sup>293</sup> Challenges arose during testing and development of this technology, however, and the Tier I GSM carriers now use or are deploying network-based solutions for Phase II.<sup>294</sup> Several Tier II and Tier III carriers also are employing network-based solutions.<sup>295</sup> The Tier III carriers in the instant category which currently use or are planning to use the GSM air interface, however, have sought waivers to permit them to deploy a handset-based solution for their GSM networks. These carriers recognize that location-capable GSM handsets are not available, but claim that this solution is best-suited to their rural or remote service areas. The carriers in this category generally request lengthy or indefinite relief until location-capable GSM handsets become available. As discussed below, we have reviewed these carriers' individual requests and have afforded relief where appropriate. We note that we fully expect, in cases where we have provided carriers relief to satisfy a revised deployment schedule, that these carriers will comply with these revised dates and benchmarks. We further note that, in the event that location-capable GSM handsets remain unavailable, we would expect carriers to actively explore other location technologies in order to achieve Phase II capability. Carriers should not assume that we would act favorably on future requests for relief on this basis.

117. **Arctic Slope Telephone Association Cooperative, Inc. (ASTAC):** ASTAC provides analog and TDMA-based cellular service to the North Slope of Alaska, and is migrating its network to GSM.<sup>296</sup> ASTAC selected a handset-based solution to achieve Phase II compliance, because the characteristics of its network do not permit the necessary triangulation that network-based solutions require.<sup>297</sup> ASTAC stated that it planned to complete the overlay of its network with GSM by September 2005, but the unavailability of location-capable GSM handsets would make it impossible to meet the handset deployment benchmarks.<sup>298</sup> ASTAC requested extensions of the following deadlines: (1) from

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<sup>293</sup> See Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000). E-OTD is a positioning method that generally relies upon measuring the time at which signals from the Base Transceiver Station arrive at two geographically dispersed locations -- the mobile phone/station and a fixed measuring point known as the Location Measurement Unit, whose location is known.

<sup>294</sup> See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, T-Mobile USA, Inc. Amended Request for Limited Modification of E911 Phase II Implementation Plan, 17 FCC Rcd 24908 (2002).

<sup>295</sup> See Amarillo License, L.P. and High Plains Wireless, L.P. Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 2 and Modified Request for Further Modification, CC Docket No. 94-102, filed Feb. 27, 2004, at 4; Corr Wireless Communications, LLC Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1-2; PCS License Company L.L.C. Phase II E911 Implementation Report, CC Docket No. 94-102, filed May 3, 2004, at 3.

<sup>296</sup> See Arctic Slope Telephone Association Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Aug. 11, 2003, at 2 (ASTAC Petition).

<sup>297</sup> See *id.* at 2-3.

<sup>298</sup> See *id.* at 2, 6, 9.

September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.<sup>299</sup> ASTAC reported that it was on schedule to meet the December 31, 2005 ninety-five percent handset penetration requirement.<sup>300</sup>

118. ASTAC stated that, as each segment of the system is converted to GSM, it planned to offer location-capable handsets to customers served by those cell sites, assuming equipment vendors can deliver such handsets.<sup>301</sup> ASTAC also noted that it was investigating the use of software defined radios in its GSM overlay network, which also would be an upgrade to a CDMA interface.<sup>302</sup> ASTAC reported that it has been working closely with state emergency services administrators with respect to E911 deployment, and that the sole PSAP in ASTAC's territory is not expected to have Phase II capability in the near future due to lack of state funds.<sup>303</sup> In its January 8, 2004 Second Interim Report, ASTAC indicated that it expected location-capable GSM handsets to be available during the fourth quarter of 2004, when it expected to begin deployment of its GSM upgrade.<sup>304</sup>

119. *Benchmark Relief.* We find that ASTAC has been diligent in pursuing a location solution for its network. Further, we believe that ASTAC has satisfied the Commission's standards for seeking relief of the Commission's Phase II implementation requirements. Given its rural service area, ASTAC has chosen to pursue a handset-based solution, and ASTAC has been making progress towards completing its GSM overlay to enable such a solution. Furthermore, ASTAC has been meeting with vendors, coordinating its efforts with the PSAP, and has provided a clear path to full compliance with respect to its transition to GSM. ASTAC, through no fault of its own, is dependent on the availability of location-capable GSM handsets.

120. For these reasons, we grant ASTAC the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handset; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.

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<sup>299</sup> See *id.* at 11-12.

<sup>300</sup> See Second Interim Report Regarding E911 Phase II Deployment Arctic Slope Telephone Association Cooperative, Inc., CC Docket No. 94-102, filed Jan. 8, 2004, at 2 (Second Interim Report). ASTAC also mentioned, however, that it was possible that it may not meet this deadline. See *id.* In the event that ASTAC anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, ASTAC should file an appropriate and timely request for relief.

<sup>301</sup> See Supplement to Arctic Slope Telephone Association Cooperative, Inc. Petition for Waiver of Section 20.18(g) of the Commission's Rules, CC Docket No. 94-102, filed Dec. 1, 2003, at 3 (ASTAC Dec. 2003 Supplement).

<sup>302</sup> See *id.*

<sup>303</sup> See *id.* at 5.

<sup>304</sup> See Second Interim Report at 2. We note that location-capable GSM handsets are not yet available.

121. **Edge Wireless Licenses, LLC (Edge):** Edge operates TDMA networks in Oregon, Idaho, Wyoming, and California. Edge provides roaming-only GSM service in Idaho and Wyoming, and both roaming and home GSM service in Oregon and California.<sup>305</sup> Edge stated that because it operates in a predominantly rural area, it had selected a handset-based location technology for both its TDMA and GSM network, as a network-based solution may not meet the Phase II accuracy and reliability standards for its rural network.<sup>306</sup> Edge sought a waiver of the Commission's Phase II requirements with respect to the sale and activation of location-capable handsets, based on the fact that there are no location-capable TDMA or GSM handsets available.<sup>307</sup> Edge stated that there is no reasonable way for it to comply with the September 1, 2003 deadline to commence the sale and activation of location-capable handsets for either its TDMA or GSM network, as such handsets were not available.<sup>308</sup>

122. Edge stated that it installed Phase II-compatible GSM network equipment and will install the required software and equipment at its Medford, Oregon switch after location-capable handsets are commercially available and distributed to Edge subscribers.<sup>309</sup> Edge reported that it has no agreements in place to obtain location-capable handsets, but it anticipated that Phase II service will be available on its GSM network in the second half of 2005.<sup>310</sup> Edge further stated that it is unlikely it will achieve ninety-five location-capable handset penetration by December 31, 2005, but did not specifically seek a waiver of this requirement.<sup>311</sup> Edge noted that it has been actively working with the PSAPs in its service area regarding the deployment of Phase II service,<sup>312</sup> and it does not appear the Edge has received any valid Phase II PSAP requests.<sup>313</sup>

123. *Benchmark Relief.* Given its rural service area, we find it reasonable for Edge to pursue a handset-based solution, and Edge has made progress towards completing its GSM overlay and installing Phase II-compatible network equipment to enable such a solution. However, Edge has not provided sufficient information to warrant a waiver of the Commission's rules. Edge has not provided details with respect to its efforts to meet with vendors, and with PSAPs, and has not provided specific schedules and a clear path to full compliance with respect to its transition to GSM. Furthermore, Edge has not provided any dates for when it plans to commence activation of location-capable handsets.

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<sup>305</sup> See Edge Wireless Licenses, LLC E911 Interim Report, CC Docket No. 94-102, filed Jan. 15, 2004, at 1 (Edge Interim Report).

<sup>306</sup> See Request for a Limited Waiver and Extension of the Commission's Phase II E911 Rules, CC Docket No. 94-102, filed Sept. 2, 2003, at 2 (Edge Waiver Request); Edge Interim Report at 2.

<sup>307</sup> See Edge Waiver Request at 3-4; Edge Interim Report at 1. Edge did not offer any specific dates for when it would be able to meet the location-capable handset activation benchmarks.

<sup>308</sup> See *id.*

<sup>309</sup> See Edge Interim Report at 2.

<sup>310</sup> See *id.* at 3. Edge noted that it currently provides Phase II service in four counties in Oregon using the TDMA/Airbiquity solution. See *id.*

<sup>311</sup> See *id.*

<sup>312</sup> See *id.* at 1.

<sup>313</sup> See *id.* at 2

124. However, given that Edge has been working with the PSAPs in its area regarding the deployment of Phase II service, that no PSAPs in Edge's service area have requested Phase II service, and that Edge is dependent on the availability of location-capable GSM handsets, we will grant Edge a limited extension of time to comply with the Commission's rules. We would expect that during this time Edge would submit a waiver request that provides a clear path toward full compliance and evidence of Edge working with vendors and PSAPs toward that end. Specifically, we grant Edge the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable.<sup>314</sup>

125. **Key Communications, LLC (Key) and Keystone Wireless, LLC (Keystone):** Key and Keystone operate GSM networks in West Virginia and Pennsylvania, respectively. In a jointly filed petition, the carriers stated that due to the failure of handset manufacturers to make available location-capable GSM handsets, they decided to pursue a hybrid Phase II solution.<sup>315</sup> The carriers explained that the installation of a Nortel solution, based on Timing Advance/Network Measurement Report (TA/NMR) technology, involves a network-based component, followed by deployment of A-GPS handsets.<sup>316</sup> They noted that the network component alone does not meet the accuracy requirements contained in the Commission's rules, but that it offers a greater level of accuracy than Phase I service.<sup>317</sup> The carriers stated that A-GPS handsets are not likely to be available until the third or fourth quarter of 2005.<sup>318</sup> Even once the handsets are deployed, the carriers submitted that the system still may not be capable of meeting the accuracy requirements of the Commission's rules.<sup>319</sup>

126. Key reported that it has informed requesting PSAPs of its plan to implement a hybrid Phase II solution and that the involved PSAPs are satisfied with the proposed implementation

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<sup>314</sup> In the event that Edge anticipates that it cannot comply with the December 31, 2005 handset penetration deadline, Edge should file an appropriate and timely request for relief, including under the standard articulated in the *ENHANCE 911 Act*. See *supra* ¶ 11.

<sup>315</sup> See Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Dec. 10, 2003, at 2-3 (Key and Keystone Supplement). In an earlier petition, the carriers explained that they were considering a handset-based Phase II solution, because the terrain in their coverage areas precludes network-based triangulation. See Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Aug. 21, 2003, at 1, 3-4 (Key and Keystone Aug. 2003 Petition). See also Key Communications, LLC Tier III Carrier Interim Report Fourth Quarter 2004, CC Docket No. 94-102, filed Jan. 3, 2005, at 2 (Key Interim Report) and Keystone Wireless, LLC Tier III Carrier Interim Report Fourth Quarter 2004, CC Docket No. 94-102, filed Jan. 3, 2005, at 2 (Keystone Interim Report) (each stating that only a minor portion of its service area is potentially susceptible to triangulation techniques).

<sup>316</sup> See Second Supplement to Petition for Waiver of Deadlines for Implementation of Phase II E911, CC Docket No. 94-102, filed Jan. 3, 2005, at 1-2 (Key and Keystone Second Supplement).

<sup>317</sup> See Key and Keystone Supplement at 3-4.

<sup>318</sup> See Key and Keystone Second Supplement at 2.

<sup>319</sup> See *id.* at 3-4 (submitting that Nortel cannot guarantee that even with full implementation of the TA/NMR technology, the Phase II accuracy requirements will be met).

schedule.<sup>320</sup> Keystone also reported that it has informed the requesting PSAPs of its plan to implement a hybrid solution, but that the involved PSAPs have expressed some concern about Keystone's implementation schedule.<sup>321</sup> The carriers requested extensions from September 1, 2003 until October 1, 2006 to commence the sale and activation of location-capable handsets, from November 30, 2003 until December 31, 2006 to ensure that at least twenty-five percent of handsets activated are location-capable, from May 31, 2004 to June 30, 2007 to ensure that at least fifty percent of handsets activated are location-capable, and from November 30, 2004 to December 31, 2007 to ensure that one-hundred percent of handsets activated are location-capable.<sup>322</sup> Furthermore, Key and Keystone requested a stay of the Section 20.18(h) accuracy requirements until December 31, 2011, or twelve months from receipt of a valid E911 Phase II request, whichever is later.<sup>323</sup>

127. *Benchmark relief.* We find that good cause exists to grant limited relief to Key and Keystone. It appears that they have stayed abreast of technological developments and modified their plans accordingly in an effort to achieve compliance, as evidenced by their decision to explore the TA/NMR solution. However, in light of the fact that the carriers stated that A-GPS handsets would be available by third or fourth quarter 2005, we will grant more limited extensions than requested. Specifically, we grant Key and Keystone the following extensions: (1) from September 1, 2003 until July 1, 2005 to begin selling and activating location-capable handsets; (2) from November 30, 2003 until July 1, 2005 to ensure that at least twenty-five percent of handsets activated are location-capable; (3) from May 31, 2004 until October 1, 2005 to ensure that at least fifty percent of handsets activated are location-capable; and (4) from November 30, 2004 until December 31, 2005 to ensure that one-hundred percent of handsets activated are location-capable. We believe that the relief granted properly balances the expected availability of location-capable handsets for GSM networks with the critical need to ensure that Phase II services are made available as quickly as possible.

128. The *Non-Nationwide Carriers Order* provided carriers with a timeframe of thirteen months from the date that one-hundred percent of all new handset activations are location-capable to the date that ninety-five percent of its subscriber base's handsets are location-capable.<sup>324</sup> We believe that a thirteen-month timeframe should provide Key and Keystone with an adequate period of time to ensure that their embedded customer base uses location-capable handsets. Because we extend Key's and Keystone's deadlines for ensuring that one-hundred percent of all new handset activations are location-capable to December 31, 2005, we afford Key and Keystone an additional thirteen months from this date to ensure that the handset penetration rate among their subscribers reaches ninety-five percent.

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<sup>320</sup> See Key Interim Report at 3.

<sup>321</sup> See Keystone Interim Report at 3. Keystone added that it has retained Intrado to assist it in working with the PSAPs to resolve their concerns. See *id.*

<sup>322</sup> See Key and Keystone Second Supplement at 4.

<sup>323</sup> See *id.*

<sup>324</sup> Pursuant to the *Non-Nationwide Carriers Order*, Tier III carriers are required to ensure that one-hundred percent of handsets activated are location-capable by November 30, 2004, and that they achieve ninety-five percent penetration of location-capable handsets among their subscribers by December 31, 2005. See *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14852-53 ¶ 33.